

REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Status of Applicant's related application

The Applicant wishes to draw the Examiner's attention to the Applicants' related co-pending application 10/723,244, filed April 13, 2004. Office actions have not yet issued.

Status of the claims

Claims 23-56 were pending in this application. Claims 23, 27, 35, 41, and 51 were amended and new claims 57-70 were added to further clarify the invention and to more fully claim the Applicant's invention. Support for the amendment of the claims can be found in the application as filed. See, for instance, page 3, line 10 to page 4, line 14 and Figure 1E of the application. Support for the new claims can be found in the application as filed. See, for instance, on page 1, lines 18-20 and 24-29; page 2, lines 9-13; and page 3, lines 25-31 of the application. Accordingly, no new matter has been introduced into this application as a result of the present amendment.

Summary of the Office action

Turning now to the office action, the Examiner objected claims 36 and 52 but would find them to be allowable if placed into independent format. However, the Examiner rejected claims 23-28, 30, 33, 35, 39-46, 48, 51, 55, and 56 under 35 U.S.C. section 102(b) as being anticipated by Igaue et al. (RE 35,687) ("Igaue"). Claims 23, 24, 28, 29, and 34 were also rejected under 35 U.S.C. section 102(b) as being anticipated by Clarke (U.S. Patent No. 5,149,336) ("Clarke"). Claims 29, 37, 47 and 53 were also rejected under 35 U.S.C. section 103(a) as being unpatentable over Igaue as applied to claims 23, 35, 41, and 51 and further in view of Paul et al. (U.S. Patent No. 6,060,638) ("Paul"). Finally, claims 31, 32, 49 and 50 were also rejected under 35 U.S.C. section 103(a) as being unpatentable over Igaue. The Applicant respectfully traverses these rejections and submits that all of the claims are allowable.

Rejection under 35 U.S.C. section 102(b) based on Igaue

Claims 23-28, 30, 33, 35, 39-46, 48, 51, 55, and 56 stand rejected under 35 U.S.C. section 102(b) as being anticipated by Igaue et al. (RE 35,687) ("Igaue"). The Examiner alleged that Igaue disclosed the Applicant's invention as presently claimed. The Applicant respectfully traverse this rejection.

As a general rule, for prior art to anticipate under section 102, every element of the claimed invention must be identically disclosed in a single reference. Corning Glass Works v. Sumitomo Electric, 9 U.S.P.Q.2d 1962, 1965 (Fed. Cir. 1989). The exclusion of a claimed element, no matter how insubstantial or obvious, from a reference is enough to negate anticipation. Connell v. Sears, Roebuck & Co., 220 U.S.P.Q 193, 1098 (Fed. Cir. 1983). Applicants respectfully submit that Igaue cannot be applied to support an anticipation rejection of the claims under 35 U.S.C. section 102(b).

Specifically, the Examiner alleged that Igaue disclosed a protective undergarment having an integrally formed body 13b of an elastic liquid impermeable material, an absorptive device 14 associated with a first portion 8 of body 13b and a fibrous layer 12 affixed to the inner surface of body 13 b in a second portion 9, 10 as shown in Figure 3. The discussion is found starting in page 2 and 3 of the Office action. Contrary to the Examiner's assertions, Igaue's fibrous layer 12 is an inner sheet of non-woven fabric, not "loose" fibres as recited in present claims 23, 27, 35, 41 and 51. This is supported by Igaue's disclosure in Figure 3 which illustrates fibrous layer 12 as an upper / inner sheet. Further support can be found in Igaue at col. 2, line 46 ("inner sheet 12 made of elastic, water-permeable non-woven fabric to form an inner surface of the garments"); col. 2, line 51 ("said non-woven fabric sheet 12 ..."); col. 2, line 56 ("Said elastic, water-permeable non-woven fabric may be obtained preferably by carding heat criped fibres having a basic weight.... To form web and then heat treating this web so as to present a sheet-like form."); Col. 5, line 17 and claim 2 ("...wherein an inner sheet forming an inner surface of the garment..."); Col. 5, line 24 and claim 3 ("...an absorbent core(14) sandwiched between a water-permeable inner sheet (12)..."). There is no teaching or suggestion in Igaue of any "loose" fibers affixed to a garment as recited in the present claims. Thus, Igaue does not anticipate claims 23, 35, 41, and 51.

Igaue also does not anticipate claims 24, 39, 42 and 55 which recite loose fibers affixed to a specific section of the garment body.

Igaue does not anticipate claims 25, 26, 28, 30, 33, 43, 44, 46 and 48 for at least the reason that these claims depend from independent claims 23 and 41 and Igaue does not teach or suggest loose fibers as recited in the independent claims.

Finally, Igaue does not anticipate claims 27, 40, 45 and 56 since Igaue does not teach or suggest “loose fibers affixed to at least a portion of the outer surface” of the integrally formed garment body as recited in claims 27 and 40 and the integrally formed dressing body as recited in claims 45 and 56. Igaue’s fibres 13a affixed to the outer surface of the body 13b is a sheet of non-woven fabric, not “loose” fibres as recited in the present claims. This is supported by Igaue’s disclosure at col. 2, line 47 (‘an outer sheet 13 made of elastic, water-impermeable elastomer sheet 13b such as plastic or rubber sheet laid on the inner surface of non-woven fabric 13a which is substantially similar to said non-woven fabric sheet 12...” (Emphasis added)).

For at least these reasons, the Applicant respectfully submits that Igaue cannot be applied to support a section 102(b) rejection of the present and newly added claims. Withdrawal of the section 102(b) rejection based on Igaue is in order and is respectfully requested.

Rejection under 35 U.S.C. section 102(b) based on Clarke

Claims 23, 24, 28, 29, and 34 stand rejected under 35 USC section 102(b) as being anticipated by Clarke (U.S. Patent No. 5,149,336)(“Clarke”). The Examiner alleged that Clarke disclosed the Applicant’s invention as presently claimed. The Applicant respectfully traverses this rejection.

With respect to claims 23 and 34, the Examiner alleged that Clarke disclosed an undergarment (a brassiere) having an integrally formed body 18 of an elastic liquid impermeable material, an absorptive device 24 associated with an inner surface of body 18 and a fibrous layer 22 affixed to the inner surface of body 18 in a second portion as shown in Figure 5. The discussion is found starting in page 3 of the Office action. Contrary to the Examiner’s assertions, Clarke’s disclosure is directed to a disposable, form-fitting breast pad, not an integrally formed garment body as recited in the present claims. See Clarke, for instance, in the Abstract (“disposable, form fitting, absorbent pad”); col. 5, line 20 (“FIG.5 is a front perspective of the breast pads of the present invention contained within a brassiere on a wearer”; col. 8, line 28 (“Referring to FIG. 5, the pads 10 can be

seen an in actual use. The wearer 30 is wearing a typical brassiere 32, which may be a maternity or nursing brassiere..."); and col. 8, line 64 and claim 1 ("A contoured breast pad for use by a human female... said pad being placed between a brassiere cup worn by the wearer and said breast."). Thus, the alleged integrally formed body is the pad itself, not the garment body of a liquid impermeable material as recited in the present claims.

Furthermore, Clarke's fibrous layer 22 is an inner wicking layer having "peripheral edges"; this supports that layer 22 is actually a sheet of material, not "loose" fibres as recited in present claims 23, 27, 35, 41 and 51. This is supported by Clarke's disclosure at col. 5, line 50 ("The inner wicking layer 22 should be of such a material that it will remain as dry as possible..... A suitable inner wicking layer 22 material also is a thin hydrophobic material which is liquid permeable and thus allows..... Such a material is disclosed in U.S. Pat. No. 892,532..."; and col. 7, line 24 ("The three layers may be bonded together in any conventional manner. A preferred method is to bond outer moisture resistant layer 18 to inner wicking layer 22 along their peripheral edges."). There is no teaching or suggestion in Clarke of any "loose" fibers affixed to a garment as recited in the present claims. Furthermore, there is no teaching or suggestion in Clarke of the protective garment as recited in the new claims.

Clarke also does not anticipate claims 24 which recite loose fibers affixed to a specific section of the undergarment body.

Clarke does not anticipate claim 28 for at least the reason that this claim depends from independent claim 23 and Clarke does not teach or suggest loose fibers as recited in the independent claim.

Finally, Clarke does not anticipate claim 29 since the express disclosure relied on by the Examiner on col. 5, lines 43-45 relates to a cotton mesh (not cotton fibers) for use in the absorbent pad, not a garment.

For all of these reasons, the Applicant respectfully submits that Clarke cannot be applied to support a section 102(b) rejection of the present claims. Moreover, the Applicant submits that Clarke cannot be applied to support any rejection of the newly added claims under section 102(b). Withdrawal of the section 102(b) rejection based on Clarke is in order and is respectfully requested.

Rejection under 35 U.S.C. section 103(a) based on Igaue and Paul

Claims 29, 37, 47 and 53 were also rejected under 35 U.S.C. section 103(a) as being unpatentable over Igaue as applied to claims 23, 35, 41, and 51 and further in view of Paul et al. (U.S. Patent No. 6,060,638) ("Paul"). The Examiner alleged that the presently claimed invention is obvious in view of Igaue's disclosure and further in view of Paul's disclosure. The Applicant respectfully traverses this rejection.

The Federal Circuit reiterated the manner in which obviousness rejections are to be reviewed. Where claimed subject matter has been rejected as obvious in view of a combination of prior art references, "a proper analysis under § 103 requires, *inter alia*, consideration of two factors: (1) whether the prior art would have suggested to those of ordinary skill in the art that they should make the claimed composition or device, or carry out the claimed process; and (2) whether the prior art would also have revealed that in so making or carrying out, those of ordinary skill would have a reasonable expectation of success." *In re Vaeck*, 947 F.2d 488, 493, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991), citing *In re Dow Chemical Co.*, 837 F.2d 469, 473, 5 U.S.P.Q. 2d 1529, 1531 (Fed. Cir. 1988). As the Federal Circuit emphasized by succinctly summarizing: "Both the suggestion and the reasonable expectation of success must be founded in the prior art, not in the Applicants' disclosure." *Id.* Contrary to the Examiner's position, neither Igaue nor Paul, alone or in combination, suggest doing what the Applicants have done.

As discussed above, there is no teaching or suggestion in Igaue of any "loose" fibers affixed to a garment as recited in the present claims. Paul merely relates to a matched permeability liner/absorbent structure system, suitable for use in absorbent articles. See Paul's abstract. Paul is completely silent with respect to any "loose" fibers affixed to a garment as recited in the present claims. Thus, Paul's teachings adds nothing that can remedy the deficiencies in Igaue's teachings.

The Examiner asserts that "it is common knowledge in the art to use cotton fibers to form the bodyside liner of an absorbent article, as disclosed by Paul in column 4, lines 12-27." Paul's disclosure does not support the Examiner's assertion, however. Paul clearly states that the bodyside liner is a non-woven fabric or web. See Paul at col. 4, line 15 ("Various materials can be used in forming the bodyside liner 12 of the present invention, including apertured plastic films, woven fabrics, nonwoven webs, porous foams, reticulated foams and the like... Nonwoven materials have been found particularly suitable

for use in forming the bodyside liner...or bonded carded webs of natural (for example, wood or cotton fibers)....”).

As discussed in the Applicant’s specification, loose fibres are affixed to the garment body to provide a comfortable and non-stick skin engaging surface, not an absorptive device as the Examiner asserts . See the present specification at page 3, lines 25-29. There is no teaching or suggestion in Igaue or Paul, alone or in combination, of any “loose” fibers affixed to a garment or dressing as recited in the present claims. Furthermore, there is no teaching or suggestion in Igaue or Paul, alone or in combination, of the protective garment as recited in the new claims. Thus, the Applicant respectfully submits that neither Igaue nor Paul, alone or in combination, can be applied to support a section 103(a) rejection of the present and newly added claims. Withdrawal of the section 103(a) rejection based on Igaue and/or Paul is in order and is respectfully requested.

Rejection under 35 U.S.C. section 103(a) based on Igaue

Claims 31, 32, 49 and 50 stand rejected under 35 U.S.C. section 103(a) as being unpatentable over Igaue. The Examiner alleged that the presently claimed invention is obvious in view of Igaue’s disclosure and further in view of Paul’s disclosure, stating “Igaue discloses all aspects...the exception of the undergarment being seamless. It would have been an obvious matter of design choice to make the garment seamless, since the applicant has not disclosedand it appears the garment of Igaue would function equally well as the claimed invention.” See page 4 of the Office action. The Applicant respectfully traverses this rejection.

As the Examiner has correctly stated, Igaue does not disclose or suggest a garment body that is seamless. However, the Applicant submits that Igaue further does not teach or suggest that the garment body is a body tight as recited in the aforementioned claims. As disclosed in the Applicant’s specification, a garment body may be prepared by dipping a form into a liquid (i.e., liquid latex) and the resulting garment body is eventually removed from the form to provide a low cost seamless body tight garment. See the specification at page 3, lines 15-19; and page 4, lines 1-3 and Figure 1B. As noted from the figures and the specification, seams are not required in order to attach the garment to the body waist and leg openings. Seam elimination advantageously reduces the number of manufacturing process steps and over all costs and results in a low cost, light weight

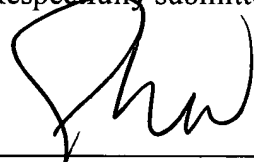
stretchable garment. As noted by the Applicant, the invention seeks to provide a protective garment which is generally light and more comfortable than conventional protective garments and which can be manufactured in large quantities at relatively low cost. See the specification at page 1, lines 11-13. Igaue does not teach or suggest any seamless body tight garment and instead teaches a baby diaper prepared in a complicated multi-step process involving the attachment of multiple elastic cuff members around leg openings. See Igaue at col. 1, line 28 to col. 2, line 12. Thus, motivation to make and use a seamless body tight garment could only have arisen from the Applicant's own disclosure, not from Igaue's disclosure. Applicant respectfully submits that Igaue cannot be applied to support a section 103(a) rejection against claims 31, 32, 49 and 50. Furthermore, Applicant submits that Igaue cannot be applied to support a section 103(a) rejection of the new claims. Withdrawal of the section 103 rejection of the claims is in order and is respectfully requested.

In conclusion, the Applicant respectfully submit that this application is in allowable condition and request a Notice to this effect.

Reconsideration of this application is respectfully requested and a favorable determination is earnestly solicited. The Examiner is invited to contact the undersigned representative if the Examiner believes that this would be helpful in expediting the prosecution of this application.

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Respectfully submitted,



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